

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FINANCE AND CLAIMS**

**Call to Order:** By **CHAIRMAN TOM ZOOK**, on April 11, 2003 at 8:00 A.M., in Room 317 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Sen. Tom Zook, Chairman (R)  
Sen. Bill Tash, Vice Chairman (R)  
Sen. Keith Bales (R)  
Sen. Gregory D. Barkus (R)  
Sen. Edward Butcher (R)  
Sen. John Cobb (R)  
Sen. Mike Cooney (D)  
Sen. John Esp (R)  
Sen. Royal Johnson (R)  
Sen. Bob Keenan (R)  
Sen. Rick Laible (R)  
Sen. Bea McCarthy (D)  
Sen. Linda Nelson (D)  
Sen. Trudi Schmidt (D)  
Sen. Corey Stapleton (R)  
Sen. Emily Stonington (D)  
Sen. Jon Tester (D)  
Sen. Joseph (Joe) Tropila (D)

**Members Excused:** Sen. Debbie Shea (D)

**Members Absent:** None.

**Staff Present:** Prudence Gildroy, Committee Secretary  
Taryn Purdy, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 767, 4/3/2003; HB 3, 3/27/2003;  
HB 4, 3/27/2003; HB 11, 3/27/2003;  
HB 722, 3/20/2003; HB 744,  
3/24/2003

Executive Action: HB 722; HB 744; HB 363; HB 11; HB  
3; HB 4; HB 767; SB 261; HB 18; HB  
120

HEARING ON HB 767

Sponsor: REP. JOHN BRUEGGEMAN, HD 74, Polson

Proponents: Brenda Nordlund, Department of Justice  
Kelly Mantooth  
Joe Mazurek, Montana Interactive  
Rich Olson, Montana Interactive

Opponents:

Opening Statement by Sponsor:

REP. JOHN BRUEGGEMAN, HD 74, Polson, opened on HB 767 which allows the **Department of Justice** to create a new specialty licence plate for motorcycles. With the special revenue created, there will be \$20 extra on each license plate for grants to non-profits for wishes for chronically ill children. The **Montana Hope Project** will be one of them. The **Highway Patrol** was instrumental in creating and managing that program. The other part of the bill is cleaning up and changing some of the policy with respect to how the department sells information with respect to motor vehicles. Security will be tightened, and the fee structure will be changed.

Proponents' Testimony:

Brenda Nordlund, Motor Vehicle Division, Department of Justice, testified in support of HB 767. She submitted an amendment to the bill. **EXHIBIT(fcs78a01)** She explained that in late 1999, a vendor came to the division and wanted to buy a list of conviction received in the last month in Montana in motor vehicle records. The division entered into that contract on behalf of insurance support organizations. Insurance companies have legitimate underwriting interests in motor vehicle records. They also came with a **Supreme Court** decision that said they can't rely on motor vehicle record fee. They discovered the arrangement, though compliant with the generic public records law and the motor vehicles laws more broadly and more confined in the next session with the **Montana Privacy Protection Act**, had the potential to cut into the feasibility and viability of the portal--the MVR's that they have been selling for years to insurance companies at \$4 per record. After they entered into this contract they discovered lots of people were asking them to

sell "wallet data," which is the name, address, date of birth, license status information, etc., to be used for a different purpose. There was nothing in Montana law to prevent them from engaging in those sales. They felt it was a policy decision that needed to come to the Legislature. They are not opposed to providing motor vehicle records to legitimate business interests as they have done in the past. They want to restrict bulk sales of data from the Montana driving record history database. The requests would go through the state portal, and the bill would require a convenience fee for this. The amendments are to correct some drafting errors. On page three, line 11, the words "personal" and "physical description" would be struck, to define personal information as including the name, address, driver's license number and date of birth. On page three, lines 19-20, the amendment clarifies they would sell parts of records to insurance companies based on a change of activity or license status. On page 3, line 28, they asked the fee be changed from \$1 to \$.08 per record requested.

**Kelly Mantooth**, testified he was a highway patrolman, but was there on his own time. He is the state coordinator for the **Montana Hope Project**. Back in 1984, the association decided to do something for children. In 1984, they granted two wishes, and are now at 195 wishes since that date. Last year, 19 wishes were granted in the state of Montana. He described his job as fun, but heartbreaking. They hold a reunion every year at the Isaac Walton Inn the first week in June. That reunion is free to any and all recipient families. The average cost of a wish last year, was \$5640. This money came from fund-raising events, including the Ride for Hope, which is a motorcycle ride. The **Montana Hope Project** has no paid employees, and the office rental space and supplies for the eleven volunteers across the state was \$22,000. He submitted a brochure and newsletter to the committee. **EXHIBIT(fcs78a02)** **EXHIBIT(fcs78a03)**

**Rich Olson, Montana Interactive**, advised they do business in the state as **Discovering Montana**. They entered into a public/private partnership with the state two years previously, to provide electronic government services for business and citizens across the state. They put considerable resources into establishing an infrastructure to be able to do this. Services include the **Department of Correction's** convicted offender network, the **Secretary of State's Office** business entity search, paying tuition for a student of the **University of Montana**, filing taxes online, or buying hunting and fishing licenses online. They strongly support **SB 767** because it protects the existing revenue for the state and the portal, and felt there was no reason to expend the resources of the department. The infrastructure is

already in place, and there is no reason requests shouldn't come through the portal.

**Joe Mazurek, Montana Interactive**, pointed out a change in the bill regarding bulk data. The insurance companies that request information on individual drivers have a contractual relationship. He suggested there is an important privacy issue in terms of someone requesting copies of every driver's license in the state of Montana. The bill seeks to protect this. Many people have their social security number as their driver's license number, and would like to keep that as private as possible. The bill requires there be a business relationship between, typically, the insurance company and the driver's information being sought.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. RICK LAIBLE** asked **Ms. Nordlund** what information will be on the portal.

**Ms. Nordlund** advised currently, an individual driving record could be ordered by an independent insurance agent, and insurance company, or an employer. This includes name, date of birth, driver's license number, sex, etc., and license status information, convictions, suspensions, or traffic accident records. There is no other personal information, a visual image, or personal address.

**SEN. LAIBLE** asked who has access, and if it is anyone who has a computer.

**Ms. Nordlund** replied you have to comply with the **Driver Privacy Protection Act**. That is in Title 70, Chapter 11, Section 501 forward. Anyone can have access to a motor vehicle record, if they provide the department with the information so they can isolate the person from another with the same name. Conviction information is public information. Personal information is protected and can only be released to those listed in the bill beginning on page 5 line 24.

**SEN. LAIBLE** expressed concern that if someone has a date of birth and social security number, it is an invitation to mischief.

**SEN. ED BUTCHER** expressed concern about hackers obtaining social security numbers and an individual's maiden name.

**Ms. Nordlund** advised the department does not give that information, and the bill is intended to prevent them from giving away that information. The bill will prevent the sale of bulk information.

**SEN. BUTCHER** asked why they dropped the fee to \$.08.

**Ms. Nordlund** deferred the question to **Dean Roberts, Department of Justice**.

**CHAIRMAN TOM ZOOK** said the fee is supposed to be commensurate with the service provided.

**Mr. Roberts** said that is correct. They can't charge more than the service provided for that kind of effort. They sell license plate information to parking commissions in Montana for \$.08 per record. They had to come up with a price that was fair so it wouldn't be challenged in court. Across the country, that kind of information runs from less than a penny, and the \$.08 would be the highest in the nation.

**SEN. BUTCHER** thought \$.08 was pretty minimal considering staff time. He felt the state should generate some revenue from providing that kind of service.

**Mr. Roberts** said they would be talking about 20-70,000 records over the course of a year under a contract with an insurance company. The companies can set rates off the information for \$.08, so they buy a motor vehicle record for \$4. The state generates about \$1.5 to \$2 million a year from insurance companies for the \$4 records. This is an enticement to spend the \$4.

**SEN. ROYAL JOHNSON** how they bill for the \$.08.

**Mr. Roberts** indicated it is all computerized. They get a bill from **Discovering Montana**, and **Discovering Montana** bills the company and sends the department the money. This generates \$20,000 to \$30,000 a year for the \$.08 fee.

**{Tape: 1; Side: B}**

**Closing by Sponsor:**

**REP. BRUEGGEMAN** closed on the bill. There is always concern when dealing with online personal information. This is a good way to tighten up how information is sold, and who it is sold to. The other important component of the bill is giving people a chance to buy a license plate making a \$20 donation to the special

revenue fund, which would then go to fund projects like the **Montana Hope Project**.

**HEARING ON HB 3**

**Sponsor:**            **REP. JOHN BRUEGGEMAN, HD 74, Polson**

**Proponents:**       **Jane Hamman, Office of Budget and Program Planning**

**Opponents:**        **None.**

**Opening Statement by Sponsor:**

**REP. JOHN BRUEGGEMAN, HD 74, Polson**, opened on **HB 3**, the supplemental bill. The bill is seen every session. There is about \$7 million in the bill for the 2003 biennium. Section 2 indicates what those costs are for.

**Proponents' Testimony:**

**Jane Hamman, Office of Budget and Program Planning**, advised there are two amendments to the bill, both of which will save additional general fund money. One is a reduction of \$1,172,000 of fire suppression costs due to \$700,000 which is already included in **HB 16**, and another because of further negotiations with the US Forest Service by the **Department of Natural Resources and Conservation**, which resulted in a reduction. The other is the calculations in the school retirement and transportation block grants. The amendment that was added in the **House Appropriations** committee will result in a striking of \$377,000.

**Opponents' Testimony:**    None.

**Questions from Committee Members and Responses:**

**SEN. EMILY STONINGTON** asked why a supplemental was needed for Child Support Enforcement this biennium.

**Lonnie Olson, Child Support Enforcement, DPHHS**, advised in the fall of 1999, the manner in which the program was funded changed. Certain performance measurements were taken of the agencies that make up this system around the country. The funding was predicated on the outcome of those performance measures. This was a fundamental change in the way the system had been funded. In anticipation of this change, they tried to enlist as much aid as they could. Before they made any calculations for that fiscal year, or the years that followed, they met with federal

representatives to determine whether or not the calculations were correct. Montana anticipated they would receive more money than they would receive. For federal fiscal year 2000, there was a deficiency of \$1.8 million, and \$886,000 in 2001. The federal government did not tell Montana how much would be awarded until two years after the money was drawn down. The department did not know the money they were drawing down was in excess of the sums they should have been drawing down. Fourteen other states also drew more federal incentive amounts than the federal government determined allowable.

**SEN. STONINGTON** asked when they learned of it.

**Mr. Olson** indicated the first they learned of it was October 11, 2001. The first obligation they had for the state to draw down this funding started on October 1, 1999.

**SEN. STONINGTON** said she didn't remember this from subcommittee. She asked if the amount budgeted in this go-round must take this into account.

**Mr. Olson** said for the budget they have prepared and presented for this session, they made a reduction. The purpose of the supplemental is in part to help this agency get through this particular budget cycle.

**SEN. JOHN ESP** asked **Ms. Hamman** to explain the amendment concerning the county block grants in Sub 2.

**Ms. Hamman** advised the amendment in Sub 2 was added in **House Appropriations**. She deferred to **Amy Carlson, OBPP**.

**Ms. Carlson** stated that happened in **SB 454**, a bill by **SEN. BOB STORY**, when the **SENATE FINANCE COMMITTEE** made the change to delay the effective date.

**SEN. ESP** said it doesn't refer to county block grants, it refers to base aid.

**Taryn Purdy, Legislative Fiscal Division**, clarified he was referring to Sub 2 on the back page of the bill. **Ms. Carlson** was referring to what happened in **SB 454**. On the back page, there is a language appropriation in case the Interest and Income money in the Common School Trust is less than anticipated. The \$8 million reflects the standard deviation from the last 8 years or so.

**Closing by Sponsor:**

**SEN. BRUEGGEMAN** closed on the bill.

HEARING ON HB 4

Sponsor: REP. JOHN BRUEGGEMAN, HD 74, Polson

Proponents:

Opponents:

Opening Statement by Sponsor:

REP. JOHN BRUEGGEMAN, HD 74, Polson, opened on **HB 4**, a budget amendment bill. This is mostly federal money, and mostly gives one-time federal authority for the next biennium.

Proponents' Testimony:

Jane Hamman, OBPP, testified as the approving authority, they review the award notices for receipt of grants, or extensions and augmentations of those grants. This is money that is in the bank. She and **Ms. Purdy** had worked on the amendments and talked to agencies, and believed everything they had heard about to date is in the set of amendments they have to the bill. She noted that when the committee takes executive action on **HB 4**, according to substantive law, additional notices she receives could be approved by the approving authority and would go the **Legislative Finance Committee** in interim reports.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REP. BRUEGGEMAN closed on the bill.

HEARING ON HB 11

Sponsor: REP. DAVE KASTEN, HD 99, Brockway

Proponents: Jim Edgcomb, Department of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. DAVE KASTEN, HD 99, Brockway, opened on **HB 11**, a bill for **Treasure State Endowment** appropriations. The **TSEP** program was put into place in June of 1992 with Legislative Referendum 110.



Funds come from interest on coal tax. **HB 11** appropriates money from the **Treasure State Endowment Fund** to 40 local governments to fund public infrastructure projects. Three additional projects will be funded if funds become available. The **Long Range Planning Committee** spent five days holding hearings on each of the projects that applied to the program, and discussing recommendations proposed by the **Department of Commerce**. There are 40 projects in **HB 11** for a total of \$15,754,695.

**EXHIBIT(fcs78a06)** **HB 11** also appropriates money from the **Treasure State Endowment Fund** to provide \$100,000 to the **Department of Commerce** for grants to local governments for emergency projects that cannot wait for legislative approval. **HB 11** appropriates monies for the **Treasure State Endowment Regional Water System Fund** to provide funds for the state share of funding the regional water system projects. In this section there is \$3.9 million. He described each section of the bill. He explained the Hill County Water District was struck in Section 8 of the bill, because the project has changed. The treatment plant has been delayed, and they are looking at using the regional water system in that area instead.

#### Proponents' Testimony:

**Jim Edgcomb**, Department of Commerce, manages the **Treasure State Endowment Program**. He read from written testimony.

**EXHIBIT(fcs78a04)** He referred to Volume 4 of the Governor's budget to the legislature. **EXHIBIT(fcs78a05)**

Opponents' Testimony: None.

#### Questions from Committee Members and Responses:

**SEN. LAIBLE** advised there are two sets on lists; one starts on page two and the other on page eight. He asked if they are different kinds of projects out of the same funding.

**Mr. Edgcomb** answered these are two sets of groups of projects. The projects listed on pages two and three are recommendations for this biennium. The projects listed on page eight are projects looked at by the 1995 legislature. The Hill County Water District is being struck because the monies haven't been used. Those funds are being recovered in order to apply those funds towards the current group of projects. The regional water system is being looked at by Hill County.

**SEN. LAIBLE** asked if the list on page eight are things waiting in the wings.

**Mr. Edgcomb** answered no. The projects listed 1-14 have either been completed or are still in progress. Hill County has never been started, and they had to go into past law to strike that project.

**SEN. LINDA NELSON** noticed most of this is new language. These are all new sections, and she wondered why they were not amending current statutes.

**Mr. Edgcomb** advised each biennium, these are all done as new sections.

**Ms. Hamman** said all these appropriations are temporary bills. After two years, except for the continuing authority in them, they expire. They write new sections every session.

**SEN. JOHNSON** asked what was the actual interest earned in 2002 and the size of the fund.

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**Mr. Edgcomb** replied in 2002, it was \$6,804,840. The full amount of principle in the **Treasure State Endowment Fund** itself was \$98,664,138.

**SEN. JOHNSON** asked if the interest is from the \$98 million. **Mr. Edgcomb** confirmed that is correct. **SEN. JOHNSON** asked if they are \$1 million short in 2002, what are they projecting in 2004 and 2005. He wondered if they were expecting a change that would increase it by that much.

**Mr. Edgcomb** conveyed the shortage they know exists is in 2002-2003. The projection for 2004-2005 has taken into account the slowdown in the economy and will actually realize that amount of earnings. He noted the city of Havre charged their \$500,000 grant back. The remainder of that shortage will be felt by the current set of projects. Someone is probably not going to receive the amount of monies that were awarded. The guarantee to those funds is only through the end of this biennium. If they have not met their start-up conditions, they lose that guarantee, and then it's first come first served. He guessed they would be \$100,000 or \$200,000 short.

**SEN. JOHNSON** asked about the shortage in 2003. **Mr. Edgcomb** said he wouldn't know what that shortage is until the end of the biennium. **SEN. JOHNSON** said he mentioned the problem is in 2003, so he must have some idea. **Mr. Edgcomb** advised the shortage has been documented for 2002. He assumes that same trend will continue with 2003.

**SEN. TRUDY SCHMIDT** referred to Exhibit 6 and what constitutes the variation in the amounts requested and the award.

**Mr. Edgcomb** advised two of them were county bridge projects. They applied for a partial grant. They were requesting that they provide a match less than what was required. Neither county was eligible for that hardship grant. Putting it back to a 50/50 cost split, reduced the amount awarded and increased the amount the counties would contribute towards the project. The other was Ekalaka, and there were concerns about preliminary engineering of improvements to their treatment system. They recommended that component of the project be pulled out and the remaining portions funded.

**SEN. ESP** told a story about a bridge in Big Timber. He recalled working for Sweetgrass County for \$20 a day about 30 years ago, when that bridge washed out. When the water went down, the supervisor looked up and down the creek, spit a couple of times, and the next morning a pile driver came in and started the bridge. Two weeks later, the bridge was done--the same bridge that's there now. The fellow that came to figure out how to do the bridge this time spent seven or eight months engineering. He spent more time engineering than they spent building the bridge in the first place, and now it's \$235,000. He said he guessed that is progress.

**Mr. Edgcomb** commented the engineering was more than just that one bridge. They did a total assessment of all the bridges in the county.

**CHAIRMAN ZOOK** noticed Sweetgrass County was there, but he didn't see Custer County.

**SEN. KEITH BALES** asked about the grants in 1995 that were amended out, since it was mentioned Havre returned a grant. He wondered why it should have to be amended out in one case, and in the other case they just returned the grant money.

**Mr. Edgcomb** thought the difference was the department didn't feel comfortable telling Hill County they were terminating the grant that had been awarded by the legislature. In the case of the city of Havre, it is their choice not to accept the award. The award is still there, but it just won't get used.

**SEN. BALES** asked if they would need an amendment in the bill to delete that in order to have the authority to spend that money.

**Mr. Edgcomb** didn't believe so. If it is not used, it's not used. They have the same possibility when a project uses less of their grant.

**Closing by Sponsor:**

**REP. KASTEN** closed on the bill. He stated Hill County has been left open for several years, and the project has changed. Ekalaka was another one that didn't utilize funds, and they were reverted. The new grant took precedence over the old one.

**CHAIRMAN ZOOK** asked on what bill the engineers disagreed.

**REP. KASTEN** indicated that was **HB 6**. He addressed the question of **SEN. JOHNSON**. They go by **HJR 2**, also, in the revenue projections. He commented the **Long Range Planning Committee** that included **SEN. JON TESTER**, **SEN. JOE TROPILA**, and **CHAIRMAN ZOOK** worked on this a lot. They had no disagreements, and the bill went together very well. When they finished, the bill ended up the way the first bill was written, except for the last part where they took Hill County out. He explained an amendment, **HB001103.acd. EXHIBIT(fcs78a07)** Instead of appropriating money on regional water projects, the amendment will insert the **Department of Natural Resource and Conservation** in the title. On page 5, line 29 of the bill, the word "commerce" is taken out and natural resource and conservation" is inserted. On page 6, line 19, the amendment will do the same thing. **DNRC** does the majority of the work on regional water, and they thought it would be a better way to do this.

**HEARING ON HB 722**

**Sponsor:** **REP. EDITH CLARK, HD 88, Sweetgrass**

**Proponents:** **Chuck Hunter, DPHHS**  
**Steve Yeakel, Montana Council Maternal and Child Health**  
**Wally Melcher, Montana Association of Independent Disability Services**  
**Jani McCall, Deaconess Billings Clinic**  
**Chris Volinkaty, Kids and Families with Developmental Disabilities**

**Opponents:** **None**

**Opening Statement by Sponsor:**

**REP. EDITH CLARK, HD 88, Sweetgrass**, opened on **HB 722**, which establishes the Prevention and Stabilization Account, and imposes a bed fee, or utilization fee, on state owned immediate care facilities providing services to the developmentally disabled. This fee will generate new revenue for the state at no additional general fund cost. It works like the nursing home bed fee that has been in place since 1991, and generates revenue that will be matched with federal revenue at the rate of almost three federal dollars for every state dollar. It will raise just over \$1 million this fiscal year, and approximately \$2 million in each year of the next biennium. It will require a general fund appropriation for the two state facilities, **MDC** in Boulder and **Eastmont** in Glendive, so they can pay the fee. The bill is structured so all the general fund cost will be returned to the general fund. Two-thirds of the general fund will be returned through federal reimbursement, while the other third will be returned to the general fund by the **Department of Revenue** from the collection of the fee. The remaining funds will be placed in a new state special revenue account--the Prevention and Stabilization Account--and be spent by **DPHHS**.

**Proponents' Testimony:**

**Chuck Hunter, Refinancing Unit, DPHHS**, submitted and explained a chart explaining the flow of funds, **EXHIBIT(fcs78a08)** and information on the effect of the closure of **Eastmont**. **EXHIBIT(fcs78a09)** This is a new provider tax, like the hospital tax, and the federal government has specific regulations about how and how much provider tax can be used to raise money for Medicaid. In order to provide a federal match on those revenues, the tax has to be broad-based, uniformly imposed, not geographically limited, less than 6% of the gross revenues of those facilities, and has to provide there are no hold harmless provisions. Each facility can't be guaranteed they will get their money back, although it can be structured so they will. It has to be an approved class of service. The only purpose for doing this is to raise new revenue. The way the finances are structured, everybody is going to be held harmless. The general fund will get their money back with an extra 2%, the state facility will get it's money back, and the federal portion of the revenue that is 2/3 of the tax payment will come in and be re-matched with Medicaid funds. That will yield about \$2.4 million in new revenue for the state to spend in the health and human service area. The bill to close **Eastmont** would have an effect on the revenues in this bill. It would lower the appropriation, and there would be a lower tax base. The mechanism would raise \$2.1 million, instead of \$2.4 in the original form. He felt there was some good funding here at no cost to the state, and encouraged they concur on the bill.

**Steve Yeakel, Montana Council Maternal and Child Health,** testified the stabilization fund is extremely important. They are in full support of the bill.

**Wally Melcher, Montana Association of Independent Disability Services, and Montana Association for Rehabilitation,** praised the creativity of the subcommittee for the creation of the Prevention and Stabilization Fund, and finding these other mechanisms to fund that account. He urged support on the bill.

**Jani McCall, Deaconess Billings Clinic, and Montana Children's Initiative,** wanted to go on record in support of the department's refinancing efforts.

**Chris Volinkaty, Kids and Families with Developmental Disabilities, Region IV and V,** urged the bill be concurred in.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. BALES** asked **Mr. Hunter** why group homes don't qualify.

**Mr. Hunter** advised in the federal regulations, there are seventeen classes of providers of services that are legal for a state to institute a tax on. One of those is ICMFR's. There is another category that specifies for community providers, such as **SEN. BALES** is referring to. If there is a home fee-based waiver that was in place in a certain date on 1985, that kind of tax can be applied. The state doesn't fit that mold, as those things were in place far earlier than 1985.

**SEN. ESP** stated ICFMR's are going to become ICFDD's. He commented the definition of ICFDD's, which is the developmentally disabled, excludes the kind of homes being talked.

**SEN. GREG BARKUS** advised the amount of reliance on federal funds bothered him. His concern was the federal government cutting off funding in the future.

**Mr. Hunter** acknowledged having the same worries. The bill has contingent voidness. The federal government is tightening the rules, as they are hurting financially just as states are. In the event they decide to no longer allow these, there is protection in the legislation to deal with that. The problem **SEN. BARKUS** is addressing, is the state is becoming more reliant on these funds. If they were to close off this opportunity, this is imbedded in the budget for the next two years, and there would be a hole to fill. In the refinancing work he is doing, they are

becoming increasingly reliant on federal funds, as many states are. He likens it to the bubble that was created by the dot coms. If that bubble bursts, they will be in a bigger world of hurt than they are today. The times being what they are, he felt this is the right thing to do today.

**SEN. BUTCHER** said he also had a concern about creating a monster. He thought the cheapest thing they could do was send these people back into their homes. He wondered if there was any way to tie this type of funding to an affiliation with these homes, or if it was all covered under Medicaid.

**Mr. Hunter** replied this mechanism can only apply to the facilities themselves. There could not be a person in a lower category of care, and still be covered under the category.

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**SEN. BUTCHER** asked if it was possible to grant people full deductibility for the care of family members to shift the tax burden.

**Mr. Hunter** said it is not something he is involved in.

**SEN. LAIBLE** asked about the utilization fee and if it is added on to the monthly bill for self-pay individuals.

**Mr. Hunter** advised in the ICMFR world, 100% of those folks are Medicaid recipients. Medicaid will pick up the entire tax.

**SEN. ESP** asked **Mr. Hunter** to address the closure of **Eastmont** and what that might do to the revenue.

**Mr. Hunter** referred to Exhibit 9. It shows the net revenue generated under the budget if **Eastmont** closed. It generates about \$2.1 million in 2004, and about \$2 million in 2005. That compares to about \$2.3 to \$2.4 under **Eastmont** being open. The net impact is about a \$300,000 if **Eastmont** closes. Contingent appropriations are provided.

**Closing by Sponsor:**

**REP. CLARK** closed on the bill. It allows the state to leverage money at no cost to the general fund.

**HEARING ON HB 744**

**Sponsor:**           **REP. EDITH CLARK, HD 88, Sweetgrass**

**Proponents:**      **Chuck Hunter, DPHHS**  
                         **Bob Olson, Montana Hospital Association**  
                         **Steve Yeakel, Montana Council Maternal and Child**  
                         **Health**  
                         **Wally Melcher, Montana Association of Independent**  
                         **Disability Services**  
                         **Jani McCall, Deaconess Billings Clinic**  
                         **Sami Butler, Montana Nurses Association**  
                         **Al Davis, Montana Mental Health Association**  
                         **Chris Volinkaty, Kids and Families with**  
                         **Developmental Disabilities**

**Opponents:**        **None**

**Opening Statement by Sponsor:**

**REP. EDITH CLARK, HD 88, Sweetgrass,** opened on **SB 744**, which is about refinancing provisions. It directs **DPHHS** to continue the work of the Refinancing Unit established in **HB 2** during the recent special session. The main purpose of refinancing work is to seek federal funds to offset general fund expenditures. She said this may be dangerous, but is the only game in town. The department must have the approval of the budget office before it can reinstate any services. The bill amends the appropriations act to allow the department to use general fund savings. Without this amendment, the budget office would need to decrease the department's general fund appropriation in an amount equal to the new federal revenue generated. There are five FTE's in the bill, but they are designated as one-time-only.

**Proponents' Testimony:**

**Chuck Hunter, DPHHS,** rose as a proponent. This would be his job for the next couple of years. This continues the work of the refinancing unit through the next biennium. It directs them to continue their work in seeking to maximize federal funds. They not only want to look for more federal funds, but are looking at business processes in the department for efficiency and savings to generate as well. There are some concrete expectations built into **HB 2** already. Those include generating \$3 million in general fund savings per year of the next biennium in Child and Family Services, and \$1.8 million in Disability Services. There is another \$5 million in federal authority. If they find the federal revenue, it can be applied to the programs. They will use the utilization fees, expand authority eligibility in Child and Family Services for a better match rate, look at new Medicaid waivers, and try to assure the best possible match from all activities that are federal match. He praised the talent of his



staff, and the funding is one-time only. They see a finite time frame for the refinancing to go on. He hoped they would support the bill.

**Bob Olson, Montana Hospital Association** rose in strong support of the bill. He thought nothing was more important than the refinancing effort undertaken in **HB 744**. This is an organizational culture change. To engage in these kinds of activities to change the way human services are structured, is risk taking behavior. They are trying to encourage innovation. It takes a lot for state employees, or organizations of any kind, to rethink what they're doing and spend the extra time it takes to restructure services. The bill designates some resources and priorities. He spoke to the cost for opportunities not taken advantage of, and said those are never formally evaluated but they do exist. He recounted what his organization has been doing with the department for the last several years to show why incentives to the department would be a good idea. As the 1999 session drew to a close, the association became aware of the opportunity intergovernmental transfers provided to the state. Lots of other states were engaged in this kind of activity. It took a year to find state employee, **Jane Bernard**, who worked in the hospital program, to take the chance of developing a program and asking for federal approval. The general fund was not at risk until approval. It took four months to put the program together, and another six months to get federal approval. In doing that, \$1 million was moved to the hospitals in 2000. In 2001, it was expanded to outpatient, and it turned into about \$2 million. They asked all divisions within the department to engage in this kind of activity. It took six months more before the nursing home program would attempt a pilot. It took another six months before the legislature came back into session and heard they were going to do the project beginning July 1. Montana stood to gain \$250 million of federal money. They waited until the federal government changed the rules, which reduced their ability to take advantage of the program and lost a quarter of a billion in federal money. He contended every quarter that passed by in those two years, opportunity was lost to gather federal dollars at a time when the department was struggling with budget problems and the state was pressed for money. By the time the 2001 session was done, they worked on the hospital bed tax and nursing home bed tax. In 2002, when **Mr. Hunter's** division was formed, refinancing became a priority and staff and effort was put into it. Collectively, almost \$100 million will have been achieved over this biennium by innovation, elbow grease, and people being willing to step forward. He addressed the concern about the federal government changing the rules, etc. The federal government changes and publishes new rules every working day of the year. There is no guarantee, so they are taking

advantage of the situation as best they can. As they have been bringing ideas forward, the association has urged the legislature not to build the base on these kinds of programs. This should be one-time on top of the base to avoid building up a system that can't be sustained, without losing the opportunity presented. Their concern is the legislature is building some of these dollars into the base. He didn't think there was a huge risk because in order for the federal government to stop these kinds of programs and put Montana at this kind of risk, they will have to collapse the human service programs in Florida, California, Texas, New York, New Jersey, Pennsylvania, and Missouri. In Missouri, their state hospital assessment is their third largest source of revenue--over \$5 million a year. He suggested the risk of these things collapsing overnight is minimal. The beginning of that discussion was seen with the president's initiative to do block granting for Medicaid. The states did not favor that because it undoes all of these arrangements. The best part of the bill is it changes the organizational culture that exists at the department. He urged support of the bill.

**Steve Yeakel, Montana Council Maternal and Child Health**, advised over the last couple of years, the department has experienced a waiting list for services and internal budgetary pressures. This is along with the state budget deficit this time. The refinancing effort is good news.

**Jani McCall, Deaconess Billings Clinic, Montana Children's Initiative, Montana Association of Independent Disability Services, Montana Association of Rehabilitation**, rose in support of the bill.

**Sami Butler, Montana Nurses Association**, agreed with what had been said, and stated support for the bill.

**Al Davis, Montana Mental Health Association**, stated strong support for the bill. The association is made up of 1200 volunteer citizens made up of providers, professionals, consumers, and interested citizens. They see this as a huge undertaking. The association offers assistance to help them meet their goal.

**Chris Volinkaty, DD Kids and Families**, asked to be on record in support of the bill. They have developed a concept paper for a new 1115 waiver for children and family services. This has given great flexibility by freeing up general fund to go back into the budget to help other departments. She commended **Mr. Hunter** as kind of a hero of this session.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. BILL TASH** asked **Mr. Olson** if critical care facility designations was an example of creative thinking in the past.

**Mr. Olson** thought it was true. During the 1980s the task force recommending that demonstration project was something that took support from the state of Montana as well as the federal government to rethink how rural hospitals operate and how they are paid. That took some serious innovation.

**SEN. TASH** asked if it took a waiver. **Mr. Olson** replied it took a waiver of federal statutes and Medicare statutes, and an act of Congress to get that project off the ground.

**Closing by Sponsor:**

**REP. CLARK** closed on the bill. This is the one ray of sunshine in this session. **HB 744** doesn't provide for any new programs, but increases the ability to draw down additional federal or other funds.

**CHAIRMAN ZOOK** commented he did not recall where the idea came from in the special session to create this group, but it has certainly been a positive thing.

- Recess 9:50 a.m. -

- Reconvene 10:15 a.m. -

**EXECUTIVE ACTION ON HB 722**

**Motion:** **SEN. STONINGTON** moved that **HB 722 BE CONCURRED IN.**

**Motion/Vote:** **SEN. COONEY** moved that **THE CONTINGENT APPROPRIATION AMENDMENT IN EXHIBIT 9 BE ADOPTED.** Motion carried 18-1 with **SEN. BALES** voting no.

**Motion:** **SEN. STONINGTON** moved that **HB 722 BE CONCURRED IN AS AMENDED.**

**Discussion:**

**SEN. JOHNSON** commented if it sounds too good to be true, it probably isn't.

**CHAIRMAN ZOOK** said that is usually the case, but they would probably have to go along with it and see if it helps.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON HB 744

Motion: SEN. STONINGTON moved that HB 744 BE CONCURRED IN.

Motion: SEN. STONINGTON moved that HB074401.ALS BE ADOPTED.  
**EXHIBIT**(fcs78a10)

SEN. STONINGTON advised the sponsor agrees the amendment which has to do with a Medicaid block grant that may come forward from the federal government. This says that the legislature wants to make the decision on whether to accept the block grant, and not have the department or the Governor make that decision without them.

Vote: Motion carried unanimously.

Motion/Vote: SEN. STONINGTON moved that HB 744 BE ADOPTED AS AMENDED. Motion carried unanimously. SEN. COBB will carry SB 744 on the floor.

EXECUTIVE ACTION ON HB 363

CHAIRMAN ZOOK advised they didn't report HB 363 out the day before, because they needed to bring it back for the purposes of an amendment.

Motion/Vote: SEN. KEENAN moved TO RECONSIDER ACTION ON HB 363.  
Motion carried 18-1 with SEN. COONEY voting no.

{Tape: 3; Side: A}

Motion: SEN. KEENAN moved that HB036303.AGP BE ADOPTED.  
**EXHIBIT**(fcs78a11)

SEN. KEENAN advised the amendment clears up contingency language in the bill with SB 407.

Vote: Motion carried unanimously.

Motion: SEN. KEENAN moved that HB 363 BE CONCURRED IN AS AMENDED.

Discussion:

**SEN. STONINGTON** said they didn't really discuss the payback. She wanted clarification that the director can pay back in the second year of the biennium, but the schedule for the payback is up to the budget director. She was not clear if he is required to pay back by the end of this biennium.

**Director Chuck Swysgood, Office of Budget and Program Planning,** said the purpose of the amendment they just passed was to clear that up. The original language was wide open, and let him determine what they could or couldn't pay back. In reviewing **SB 407**, they couldn't access the \$30 million without a tobacco tax. With the uncertainty of **SB 407**, he didn't feel comfortable where they would end up in this process without the \$30 million. They need the \$30 million to save some of the programs contingent in **SB 407**. There had to be something done to **SB 407** to allow them to access this--some repayment. He was uncomfortable there would not be money to pay this back. The general fund is liable for these liabilities if this fund is below the reserves. They didn't think that would be the case for a number of years out. The amendment just passed transfers the \$30 million with no requirement to pay it back at this point in time.

**CHAIRMAN ZOOK** said the general fund would be responsible anyway.

**Director Swysgood** advised the general fund is responsible under current law for any deficiencies in the reserves to pay these claims. There are two different sets of figures where it relates to the state fund on the reserves. One is about \$158 million. If the \$26 million that was in the bill originally, it is about \$133 million. Those are not discounted. He uses a discounted rate to factor the impact of taking \$30 million away, and uses the lesser of the two numbers. The payments for this next biennium are estimated to be \$29 million. That still leaves \$30 million in reserves. It would take until 2009 before anything of significance transpires. Those liabilities decrease all the time, so it's hard to say when there would be a liability. He hoped it could be replaced by the end of the next biennium.

**SEN. STONINGTON** asked what this has done to the actuarial soundness of that old fund reserve.

**Director Swysgood** advised the amendment said that in current law the general fund is liable for any liabilities of the old fund in excess of the current reserves, and advised the \$30 million doesn't have to be paid back immediately. There is \$99 million with \$29 million in 2005 projected pay-outs. That leaves about the same amount for the next biennium.

**SEN. STONINGTON** said she spoke to **Nancy Butler, State Fund**, who said they lose any investment income that they would receive in those reserves.

**Director Swysgood** said they would lose the investment on the \$30 million. That is why he is not withdrawing it until the last minute in FY 04. If he doesn't need that much, he certainly won't withdraw that much.

**SEN. MIKE COONEY** asked if they are borrowing monies out of the old fund reserves, and that will be paid back over time with increased tobacco tax revenue.

**Director Swysgood** said that was the original amendment on the bill, with no requirements of how much to pay back or the timing. This amendment just put on the bill is strictly a \$30 million transfer as the budget director determines necessary. That will probably be close to the end of the fiscal year, and there is no requirement to pay back.

**SEN. COONEY** said with the payback, it was a problem constitutionally.

**Director Swysgood** indicated that might have clouded the picture, and that is why this is clearing everything up. It takes a straight transfer out of that money, and hopefully that can be replaced sometime later.

**SEN. SCHMIDT** asked why he didn't want a provision for payback.

**Director Swysgood** said he was not sure what's going to happen to **SB 407**. When they redid the numbers on that bill after it came out of **House Taxation**, the ability to pay this back in 2005 is slim because the amendments dropped about \$12 million in revenue. With the \$12 million projected loss of revenue the day before, the \$24 million is about the same as what the cigarette tax would bring in 2005. He did not feel comfortable with the ending fund balance with the payback, and did not want to come back in special session.

**Vote:** Motion carried 18-1 with COONEY voting no.

**Vote:** Motion to CONCUR AS AMENDED carried 18-1 with COONEY voting no.

#### **EXECUTIVE ACTION ON HB 11**

**Motion/Vote:** **SEN. TROPILA** moved that HB001103.ACD BE ADOPTED.  
(Exhibit 7) Motion carried unanimously.

Motion/Vote: SEN. TROPILA moved that HB 11 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. TROPILA will carry the bill.

EXECUTIVE ACTION ON HB 3

Motion: SEN. STONINGTON moved that HB 3 BE CONCURRED IN.

CHAIRMAN ZOOK commented not many of them have had the privilege of doing some of these long range bills. They have had wonderful help from Ms. Jane Hamman, and he expressed appreciation. SEN. TROPILA agreed.

Motion/Vote: SEN. BEA MCCARTHY moved that HB000302.ATP BE ADOPTED. Motion carried unanimously. EXHIBIT(fcs78a12)

Motion/Vote: SEN. MCCARTHY moved that HB000303.ATP BE ADOPTED. Motion carried unanimously. EXHIBIT(fcs78a13)

Motion/Vote: SEN. STONINGTON moved that HB 3 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. MCCARTHY will carry the bill on the floor.

EXECUTIVE ACTION ON HB 4

Motion: SEN. MCCARTHY moved that HB 4 BE ADOPTED.

Motion/Vote: SEN. TROPILA moved that HB000401.ATP BE ADOPTED. Motion carried unanimously.

Motion/Vote: SEN. MCCARTHY moved that HB 4 BE CONCURRED IN AS AMENDED. Motion carried unanimously. CHAIRMAN ZOOK will carry the bill on the floor.

EXECUTIVE ACTION ON HB 767

Motion: SEN. STONINGTON moved that HB 767 BE CONCURRED IN.

Motion/Vote: SEN. NELSON moved TO AMEND HB 767. (Exhibit 1) Motion carried unanimously.

Motion/Vote: SEN. STONINGTON moved that HB 767 BE CONCURRED IN AS AMENDED. Motion carried unanimously. SEN. STONINGTON will carry the bill.

EXECUTIVE ACTION ON SB 261

**Motion:** SEN. STAPLETON moved that HB026105.ATP BE ADOPTED.  
**EXHIBIT**(fcs78a14)

SEN. STAPLETON advised they had left this until now to buy some time to see if the court IT could be funded. He was not convinced it couldn't have been done, but the **Chief Justice** was not comfortable that she was getting enough money. These amendments would decouple **HB 18** from the bill. With the exception of the new language, they have had **HB 261** in committee for awhile. He recalled the committee put on an amendment on page 23, line 15 that said they may not continue to expend funds without obtaining spending authority from the next legislature. That was for the purpose of monitoring IT in the Justice department. These amendments would decouple court IT funding, and his intention is to take **HB 18** off table, add a sunset of two years for court IT and send that to the floor. He still doesn't support the idea of that bill. He thought there were still problems doing that, but he doesn't want to hurt the Justice IT, and would leave it up to the body of the Senate to decide.

**Vote:** Motion carried unanimously.

**Motion/Vote:** SEN. STAPLETON moved that HB 261 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

#### EXECUTIVE ACTION ON HB 18

**Motion/Vote:** SEN. MCCARTHY moved TO RECONSIDER ACTION ON HB 18. Motion carried unanimously.

**Motion:** SEN. STAPLETON moved that HB 18 BE CONCURRED IN.

**Motion:** SEN. STAPLETON moved that HB1601.ATP BE ADOPTED.  
**EXHIBIT**(fcs78a15)

SEN. STAPLETON explained the **Chief Justice** said she would work in the interim to try to come up with the solution. He still thought the solution might be tying it to another revenue source. There is a lot of concern about **HB 18** doubling the fee. For eight years, they were getting \$900,000 a year with no oversight for their IT. The law is to sunset in two months. They came with this bill to take away the sunset and double the fee for IT. He doesn't support this, but when they tried to couple it to **HB 261**, the **Chief Justice** felt there was not enough in there. He didn't know what else to do than to let them have the bill they originally proposed. If for some reason this bill fails, **HB 261** or **HB 2** can accommodate their IT needs. The real question of the court IT is they had \$900,000 a year for eight years, and now it



needs to be \$1.8 million a year. The amendment will force IT to come back to work with someone to figure it out. He thought maybe this is the solution.

**SEN. LAIBLE** said they had the same thing in **General Government Subcommittee**. Their concern was what are they going to end up with doubling the surcharge. With the sunset in two years, they will come back with a report. He thought they all had to support the amendment and the bill reluctantly.

**SEN. MCCARTHY** agreed with **SEN. LAIBLE**, but thought the help is needed at the local level. They felt they weren't going to get it under **HB 261**. She didn't think they object to the termination date. She hoped this is a good compromise that will help.

**CHAIRMAN ZOOK** said one of the concerns was the original \$5 would expire. A lot of the mail from the local folks concerned the \$5. Now \$5 is being added in addition in this bill.

**Vote:** Motion carried unanimously.

**Motion/Vote:** **SEN. MCCARTHY** moved that **HB 18 BE CONCURRED IN AS AMENDED**. Motion carried unanimously. **SEN. LAIBLE** will carry the bill on the floor.

#### **EXECUTIVE ACTION ON HB 120**

**CHAIRMAN ZOOK** advised this is the transfer of the detention officers to the Sheriff's Retirement System. He said **SEN. TESTER** had some amendments drafted, but said he wasn't going to offer them.

**Motion:** **SEN. TROPILA** moved that **HB 120 BE CONCURRED IN**.

**Ms. Purdy** explained amendment **HB012004.ash** is the definition of detention officers that the retirement system requested to make it more clear. **HB012005.ash** and **HB0120006.ash** EXHIBIT (17) refer to the issue raised by counsel from **PERS** having to do with the demographics of the people in the Sheriff's Retirement System changing if the detention officers went in. On average, these detention officers are older than the people in the Sheriff's retirement. They were concerned about the long term of the ability of the reserves to absorb that. One amendment is a statutory appropriation of general fund to pay the additional amount of money that would be necessary. The second one was to increase the contribution by the employer. **EXHIBIT (fcs78a16)**  
**EXHIBIT (fcs78a17)** EXHIBIT (17)

*{Tape: 3; Side: B}*

**SEN. BUTCHER** thought he must have missed the hearing, and asked what they would be gaining by doing this. There would be increased costs to counties, detention officers, and the sheriff's retirement, and increased administrative confusion. When he looks at those kinds of criticisms over a bill, there has to be a reason to shift these officers out of their existing system into this. He asked about the justification.

**SEN. TROPILA** indicated it was a 20 year retirement instead of 25.

**Motion/Vote:** **SEN. BUTCHER** moved that HB 120 BE INDEFINITELY POSTPONED. Motion passed 14-5 with COONEY, JOHNSON, MCCARTHY, SCHMIDT, and TROPILA voting no.

**ADJOURNMENT**

Adjournment: 11:20 P.M.

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SEN. TOM ZOOK, Chairman

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PRUDENCE GILDROY, Secretary

TZ/PG

**EXHIBIT (fcs78aad)**